

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LATISHA BELL, :

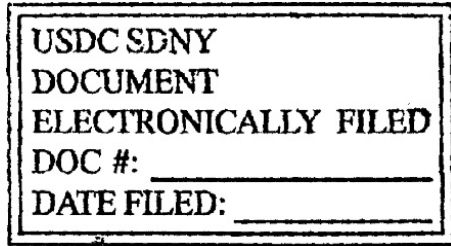
Plaintiff, :

-against- :

MCDONALD/PAULINO FOOD, :

Defendant. :

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KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE



REPORT AND RECOMMENDATION

11 Civ. 6208 (PKC)(KNF)

TO THE HONORABLE P. KEVIN CASTEL, UNITED STATES DISTRICT JUDGE

The plaintiff, Latisha Bell ("Bell"), proceeding *pro se* and *in forma pauperis*, commenced this action on August 26, 2011, alleging claims under the Americans with Disabilities Act and corresponding state and municipal anti-discrimination laws. On March 21, 2012, the undersigned issued an order directing Bell to file proof of service of the summons and complaint, with the Clerk of Court, on or before April 4, 2012. In that order, the Court cautioned Bell that failure to file proof of service, or demonstrate good cause for such failure, would result in a report recommending to your Honor that the complaint be dismissed.

As of the date of this report, Bell has neither filed proof of service of the summons and complaint with the Clerk of Court, nor submitted any writing to the Court indicating good cause for her failure to do so.

In addition, on December 1, 2011, an entry was made on the docket sheet maintained by the Clerk of Court for this action, indicating that the Pro Se Office attempted to mail a service package to Bell and it was returned to the Pro Se Office by the United States Postal Service, on October 19, 2011. In the Court's March 21, 2012 order, Bell was directed to provide the Pro Se

Office with her current mailing address, which she has failed to do; therefore, it is not possible to communicate with her.

Fed. R. Civ. P. 4(m) provides in pertinent part, that “[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 41(b) authorizes a district court to dismiss an action for failure to prosecute, or to comply with a court order. See LaSane v. Hall’s Sec. Analyst, Inc., 239 F.3d 206, 209 (2d Cir. 2001); Lucas v. Miles, 84 F.3d 532, 534-35 (2d Cir. 1996). Based on the facts set forth above, dismissing Bell’s complaint, for failing to: (i) prosecute the action; and (ii) comply with a court order, is reasonable and appropriate.

RECOMMENDATION

For the reasons set forth above, I recommend that the instant action be dismissed pursuant to Fed. R. Civ. P. 4(m) and 41(b).

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable P. Kevin Castel, 500 Pearl Street, Room 2260, New York, New York 10007, and to the chambers of the undersigned, 40 Centre Street, Room 540, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Castel. *Failure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review.* See Thomas v. Arn, 474 U.S. 140, 470 (1985); IUE AFL-CIO Pension Fund v.

Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
April 6, 2012

Respectfully submitted,



KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE